



Atty. Docket: ITW-13111

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Application of:

John H. Schneider et al. : Group Art Unit: 3721

Serial No.: 10/042,985 : Examiner: Truong, T.K.

Filed: October 19, 2001

Title: TAMPER-EVIDENT EASY-OPEN SLIDER
PACKAGE AND RELATED METHODS
OF MANUFACTURE

Hon. Commissioner for Patents
Alexandria, VA 22313

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In accordance with the OG Notice of July 12, 2005, the Applicants hereby request review of the Final Rejection mailed on March 14, 2006. A Notice of Appeal is being filed concurrently herewith.

In ¶ 6 of the Final Rejection, claims 3, 7-11, and 58-65 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Strand et al. (US 6,360,513) in view of Keller (US 3,255,869) or Deutschländer (US 4,147,583) or Kopp et al. (US 5,371,997). The Applicants believe that this rejection is clearly erroneous for the following reasons.

Independent claim 58, in substance, is directed to a package comprising a slider-operated zipper enclosed by a header, that in turn comprises a header wall having a slit that extends from an elevation higher than the top of the slider to an elevation lower than the bottom of the slider, neither end of the slit being at either side edge of the header. This structural limitation cannot be found in any of the four

references applied in the rejection. The Examiner concedes that Strand does not teach such a slit, but asserts that each of the three secondary references separately suggests that a slit could be substituted for the line of weakness 13 disclosed in Strand. The Applicants respectfully submit that this logic is unsupportable.

Strand discloses a scoreline 12 having a straight horizontal section, a curved or arcuate section 13 and a tear notch 24. The header of Strand can be torn substantially diagonally from the tear notch to the horizontal section along the arcuate section 13. Strand neither discloses nor suggests that the straight horizontal section and the substantially diagonal arcuate section 13 can have different structures.

The secondary references each disclose slits, but none of those teachings suggest substituting a single slit for the substantially diagonal arcuate section 13 of Strand.

The Keller patent discloses a horizontal tear line comprising a series of aligned slits. While it might be obvious to substitute a multiplicity of short slits, as taught by Keller, in place of the scoreline 12 (including arcuate section 13) as disclosed by Strand, the result would lack the structure recited in new claim 58, namely, a slit that extends from an elevation higher than the slider top to an elevation lower than the slider bottom. Accordingly, the combination of Strand and Keller is insufficient to make a *prima facie* case for obviousness since the aforementioned limitation would still be

missing from the proposed combination of prior art teachings. Independent claim 63 also recites in substance that the slit extends from an elevation higher than the slider top to an elevation lower than the slider bottom, and is also not obviated by Strand in view of Keller.

Furthermore, neither Keller nor Strand contains any suggestion that the spaced slits of Keller could be substituted for only the substantially diagonal arcuate section 13 of the Strand scoreline, while still making the horizontal sections of the scoreline 12 of Strand by scoring. Keller and Strand each disclose a tear line that can be formed in one operation. There is no suggestion that it would be desirable to perform two distinct operations, namely, scoring and slitting, to form a tear line having the shape taught by Strand.

The Kopp patent discloses a bag having a top transverse seal 7 with an enlargement 8 at one side edge. The enlargement is provided with a tear-open slit 9 that starts at the side edge and is comparable to known tear initiators, such as Applicants' tear notch 18. The purpose of the tear-open slit 9 is to assist in tearing open the bag, apparently at an elevation below the transverse seal 7. The Examiner asserts that it would be obvious to substitute the tear-open slit 9 of Kopp for the substantially diagonal arcuate section 13 of Strand's tear line. The Applicant respectfully disagrees. Kopp teaches using a slit as a tear initiator at the side edge of the bag. Accordingly, it would be obvious to substitute the tear slit 9 of Kopp for the tear notch 24 of Strand. Kopp

neither discloses nor suggests the desirability of substituting a slit for the substantially diagonal arcuate section 13 of Strand's tear line, which does not reach the side edge of the bag.

Similarly, in Deutschländer, the oblique or diagonal slits 24' and 24'' start at the side edges of the strip or header 17. The purpose of these slits is to facilitate tearing of the neighboring seam 10 (see col. 2, lines 16 and 17), thus opening the package. The strip or header 17 is disposed above the transverse seam 10 at the top of the package. The package has no zipper or slider. The provision of a diagonal slit that starts at the side edge of the header 17 neither discloses nor suggests substituting a diagonal slit for the substantially diagonal arcuate section 13 of Strand's tear line, which does not start at the side edge of the bag.

In view of the foregoing, Applicants submit that claims 3, 7-11, and 58-65 are patentable over the combination of prior art cited by the Examiner. Accordingly, it is respectfully requested that the Final Rejection be overturned and that this application be allowed.

In the event that claim 58 is allowed, then claim 12 - which depends from claim 58 and was withdrawn from further consideration in the Final Rejection as being drawn to a non-elected species - should also be allowed.

Respectfully submitted,

June 14, 2006

Date



Dennis M. Flaherty

Reg. No. 31,159

Ostrager Chong Flaherty &
Broitman P.C.

250 Park Avenue, Suite 825

New York, NY 10177-0899

Tel. No.: 212-681-0600

CERTIFICATE OF MAILING

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